IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No 17 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BROOKE BOND INDIA LTD

Versus

STATE OF GUJARAT

Appearance:

MR JAGDISH S JOSHI for Petitioner

MR KAMAL MEHTA FOR MR HV CHHATRAPATI for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 19/11/98

ORAL JUDGEMENT

1. The Gujarat Sales Tax Tribunal has referred the following question of law arising out of its decision dated 31.8.1988, in revision application No. 41 of 1985 at the instance of assessee:

"Whether on the facts and in the circumstances of the case, the Tribunal has erred in confirming the order of levy of interest under the provisions of Section 47(4A) of the Gujarat Sales Tax Act, 1969, relying upon the judgment of the Hon'ble Supreme Court in M/s. Associated Cement Company v. Commercial Tax Officer (48 STC 466), more particularly, in view of the recent judgment of the Hon'ble Supreme Court in M/s. J.K. Synthetics v. Commercial Tax Officer (1994) 94 STC 422"

2. The facts that have given rise to this question are that the applicant M/s. Brooke Bond India Ltd. has been carrying on the business of tea and coffee. It holds registration certificate under Gujarat Sales Tax Act, 1969 and under the Central Sales Tax Act in respect of its business that is being carried on in the State of Gujarat where it has a factory at Jamnagar and further divisions at important centres in the State of Gujarat. The period of taxation in respect of which present controversy has arisen is in respect of turn over between 1.7.80 to 30.7.81. For this period, the petitioner had submitted quarterly returns as required under the provisions of the Act, and has paid the tax at prescribed intervals in accordance with the declarations and returns submitted by him. According to applicant no purchase tax was payable by it on chicory roots which was purchased from the agriculturists who were not registered dealers. On the premise of this claim, the applicant claimed deduction of such purchases from his taxable turnover and did not pay the purchase tax on such purchases at the time of filing return. This plea of the assessee was supported by decision of Tribunal rendered in the case of M/s. Paglam Traders v. State of Gujarat on 29.9.76. The assessment was framed originally on 17.3.83. The assessing officer did not accept the claim of the assessee as to immunity from payment of purchase tax on chicory roots as by that time Tribunal has changed its earlier decision and following that later decision of the Tribunal the claim of the assessee as to exemption of tax on purchase of chicory roots was denied and additional tax in that respect was computed, demand notice was issued which also according to undisputed facts was paid within the time specified in the demand notice.

3. It appears thereafter, the Assistant Commissioner of Sales Tax initiated proceedings for revising the aforesaid assessment order. The proceedings for revision were initiated for the reason that though the assessing authority has held purchases on chicory roots to be

taxable and levied tax thereon he has not levied interest in terms of Section 47(4A) of the Gujarat Sales Tax Act 1969 (Hereinafter called `the Act'). The Assistant Commissioner of Sales Tax levied interest on the additional tax with effect from the date of filing the returns as if the said tax was payable under Section 47(2) of the Act before filing of the return and as the assessee has failed to pay the tax on the basis of final assessment at the time of filing of the return levied the interest amounting to a sum of Rs.2,85,490.15ps. The assessee challenged this order of levying interest under Section 47(4A) of the Act. The Tribunal relying on the decision of Supreme Court in Associated Cement Company v. Commercial Tax Officer, Kota and Others (48 STC 466) upheld the order of the Assistant Sales Tax Commissioner regarding levy of interest. The assessee applied for making a reference to this court pointing out that decision in Associated Cement Company (supra) case has since been overruled by Supreme Court in its later decision, in M/s. J.K. Synthetics v. The Commercial Tax Officer (94 STC 422). In these facts and circumstances the above question has been referred to us.

4. We have heard learned counsel for the parties.

5. It has been urged by the learned counsel for the Revenue that though it is true the decision in Associated Cement Company (supra) case has been overruled in the later decision, in J.K. Synthetics (supra), as both cases arose under the Sales Tax laws in the State of Rajasthan, the same cannot apply on their own force in interpreting the statute with which we are concerned, namely, Gujarat Sales Tax Act. It was urged that liability to pay interest has rightly been fixed under the Gujarat Sales Tax Act.

6. It will therefore be appropriate in the first instance to consider the provisions of the Gujarat Sales Tax Act itself before adverting to the ratio laid down by the Supreme Court in the aforesaid cases.

Section 47 reads as under:

"Payment of tax etc.

(1) Tax shall be paid in the manner herein provided, and at such intervals as may be prescribed.

(2) A registered dealer furnishing declarations or returns as required by

subsection (1) of Section 40, shall first pay into a Government treasury, in the manner prescribed the whole amount of tax due from him according to such declaration or return along with the amount of any penalty payable by him under Section 45.

(3) A Registered dealer furnishing a revised declaration or revised return in accordance with subsection (3) of section 40 which revised declaration or revised return shows that a larger amount of tax than already paid is payable, shall first pay into a Government treasury the extra amount of tax.

(4) (a) The amount of tax -

(i) due where declarations or returns have been furnished without full payment therefor, or

(ii) assessed or reassessed for any period under section 41 or section 44 less any sum already paid by the dealer in respect of such period, or assessed under section 19 or 50, and

(b) the amount of penalty (if any) levied under section 45 or 46,

shall be paid by the dealer or the person liable therefor into a Government treasury by such date as may be specified in a notice issued by the Commissioner for this purpose, being a date not earlier than thirty days from the date of service of the notice;

Provided that the Commissioner or an appellate authority in an appeal under section 65 may, in respect of any particular dealer or person, and for reasons to be recorded in writing, extend the date of payment, or allow him to pay the tax or penalty (if any) by instalments.

(4A)If a dealer does not pay any amount

of tax within the time prescribed for its payment under subsection (1), (2) or (3) or on or before the dates specified in a notice issued under subsection (4) in respect of the payment of tax falling under subsection (ii) of clause (a) thereof, there shall be paid by such dealer for the period commencing on the date of expiry of the aforesaid prescribed time of the specified date and ending on the date of payment of the amount of tax, simple interest at the rate of twenty four per cent per annum on the amount of tax not so paid or any less amount thereof remaining unpaid during such period:

Provided that where a penalty is levied under subsection (6) of Section 45 in respect of the difference and the period referred to in that subsection, no interest shall be payable under this subsection on such difference for such period.

(5) Any tax or penalty which remains unpaid after the date specified in the notice for payment, or after the extended date of payment, and any instalment not duly paid, shall be recoverable as an arrear of land revenue."

Section 47 is a comprehensive scheme laying down the period and time at which the tax is to be paid by the assessee and also provides for the consequence of non payment of tax as and when it was required to be paid. Subsection (1) in the first instance requires the assessee to pay the tax at such intervals as may be prescribed, that is to say, as provided under the Rules. Subsection (2) requires that a dealer, who is required to furnish declarations or returns as required by subsection (1) of Section 40, he shall before furnishing such declaration or returns pay into a Government Treasury the whole amount of tax due from him according to such declaration or return. Subsection (3) envisages the contingency in case a registered dealer furnishes revised declaration or returns under Section 40(3) of the Act showing a larger amount of tax payable by him than what was originally shown in the returns furnished under Section 40(1) of the Act, and that larger amount is payable by him, he shall deposit the additional amount

according to revised return before filing it. All the three subsections (1), (2) and (3) deal with obligation of assessee to pay tax at stage prior to furnishing of return. The liability to pay tax under these three subsections is as per assessee's own assessment of his taxable turnover and tax payable on that basis. Subsection (4) of Section 47, as the language clearly indicates relates to the obligation of assessee to pay tax posterior to filing of return. It envisages where a return has been filed but without full payment of tax as per returns or on assessment or reassessment for any period, it is found that the assessee has paid tax lesser than what is payable as per assessment or reassessment as the case may be, such amount shall be paid by the dealer by date as may be specified in the notice by the Commissioner for the purpose, and such date shall not be earlier than 30 days from the date of service of notice. The date specified in notice can be extended by the Commissioner or by the appellate authority, as the case may be, allowing the assessee to pay the tax or penalty, if any, with which we are not presently concerned in this case, by the extended date or by instalments.

These provisions relate to the time within which assessee has to make payment of his tax prior to filing of the returns and after filing of the return. Subsection (4A) deals with the consequence of non payment in any of the cases envisaged under Section (1), (2), (3) and (4) and the consequence is that in each case where assessee makes a default in making payment of tax in accordance with the provision as is applicable for such payment, he is liable to pay interest on the amount remaining unpaid when it was due, at rates, which have been amended from time to time with effect from the date when such tax was payable but was not paid to the date such amount has actually been paid. A bare reading of the scheme goes to show that liability to pay tax until filing of return is in accordance with the assessee's own assessment of his tax liability, and not on the basis of filing assessment. The assessee's own assessment will include his bonafide claim to any deductions, exemptions, or non taxability of any turn over of sales or purchases, which will be subject to determination by the assessing authority. Subsection (1), (2) and (3) does not require that notwithstanding assessee claims exemption or deductions he should by assuming its disallowance, include in his estimate of taxable turnover in the return and pay tax on the same. In other words, liability to pay tax on such claims, which are to be determined by assessing authority is not cast on the assessee at any time prior to such determination by the assessing

authority obviously because it would be an impossible burden to predict what view the assessing authority is to take of assessee's claim and estimate the final assessment that the revenue authorities are ultimately to make which include not only the original assessing authority but superior authority having appellate and revision jurisdiction with power to enhance the assessment as well authority to exercise suo-motu power to revise the order of original assessing authority. In other words requirement to pay tax at the time envisaged under subsection (1), (2) and (3) is not that assessee is required to pay as per final assessment. Thus obligation of assessee to pay tax until filing of the declaration, return or revised declaration or revised return is entirely on the basis of self assessment. Subsection (4) concerns non payment of tax after return has been filed. It may be seen that law enjoins payment of tax in accordance with return before filing of the return and not after filing of return. In the event assessee has not paid full tax or part of tax as per return or revised return, he commits a breach of subsection (2) or (3), as the case may be, as obligation to pay had arisen as per return and that obligation does not cease on filing of return. If he is assessed to tax at a larger sum than as per the return, the time allowed to pay such tax is as specified in the notice of demand which cannot be less than 30 days from the date of service of notice. Any payment in pursuance of assessment before the expiry of such period specified in notice is a payment made within time allowed. The default of payment envisaged under subsection (4) must necessarily relate to that obligation which arises on the assessment and not earlier thereto.

7. It may be pertinent to notice that subsection (4A) of Section 47 requires levy of interest independently in case there is breaches of each of subsection (1), (2), (3) and (4), that is to say, if assessee has not paid required instalment of tax on regular intervals under the Rules as per subsection (1), such default in making payment at any such interval will entail liability to interest payment with effect from the date when tax ought to have been paid at particular interval, until that default is made good. On the payment default will cease to exist. If the assessee has paid tax at regular intervals and at the time of filing of return it is found that still some tax is payable as per the returns after adjusting the payments made under subsection (1), the assessee has to pay that amount before submission of declaration or return under subsection (2). Obviously, this liability is only to the extent tax remaining unpaid after adjusting tax paid at

regular intervals. Default in such payment at the time of filing of return also entail payment of interest with effect from the date of return by which such tax was payable until the amount is paid and default is brought to an end. Subsection (3) is only a corollary of subsection (2), namely, where a larger sum is found to be payable by the assessee as per his own revised return, than the one declared to be payable under the original return, such additional difference must also be paid before furnishing of revised return. Obligation under subsection (3) obviously would arise only in the contingency assessee files revised return and not otherwise. But in either case, for the shortfall between the tax paid at the regular intervals and found payable as per the final return, interest liability is only to the extent tax has not been paid with effect from the date of filing of return. Subsection (4A) also envisage cessation of liability to pay interest, when such shortfall under any of subsections (1), (2) and (3) is made good. Such shortfall can be made good even before final assessment and need not necessarily wait until final assessment and service of notice of demand.

8. Subsection 4(i) deals with a case where assessee has not paid tax as per return/declaration filed by him. In such event, default under subsection (2)/(3) as the case may be, comes into existence and the assessee becomes liable to pay interest under subsection (4A) for default of subsection (2) or (3) of Section 47. So far as subclause (ii) of Section (4) is concerned, it envisage a situation where as a result of assessment, tax payable is found to be more than tax paid by the assessee. Such amount of tax, as it exceeds the amount of tax payable under return, does not become payable by the assessee at any time before assessment is made, but becomes payable by the assessee only on service of a notice of demand specifying a date by which payment is to be made. Such date cannot be specified earlier than 30 days from the date of service of notice, that is to say, a tax becoming payable as a result of assessment after adjusting the amount of tax already paid, is to be paid by the assessee within the period (not less than 30 days from the date of service of notice) in the notice of demand. If payment is made within that time the payment is considered within the time allowed, no interest liability is envisaged on amount of tax, if paid, by the date specified in notice of demand envisaged under subsection 4(ii). Plainly speaking any amount due, paid within time it is payable cannot entail consequence of bearing interest.

9. Subsection (4A) does not lay down law contrary to what flows from construction of subsection (1) to (4) of Section 47 in the context of computation of interest. If, construction as suggested by the Revenue that on assessment if any demand becomes payable, more than the tax paid by the assessee, it entails liability to pay interest with effect from the date of the filing of return, by considering that the return required to be filed ought to be as per final assessment and return filed was not true and correct return, (We may clarify here we are not considering the case of a malafide return or a return which is tainted with concealment or non-disclosure), and in such event, the interest on such additional demand should be levied with effect from the date of return, it would render this part of subsection (4A), `if a dealer does not pay any amount of tax before ..... the date specified in a notice issued under subsection (4) in respect of the amount of tax falling under sub clause (ii) of clause (a) thereof, there shall be paid by such dealer for the period commencing on ..... the specified date and ending on the date of payment of amount of tax' otiose inasmuch as as per the contention put by the Revenue in every case where assessment has been framed resulting in additional liability to tax, interest on such additional will have to be paid from the date of return notwithstanding such amount has been paid before expiry of specified date in the notice. That will leave no case in which interest will be leviable from the date specified in notice of demand but shall always be with effect from the date of return. Such interpretation which renders any part of the provision of a statute redundant cannot be accepted.

10. The Tribunal in rejecting the aforesaid principle has relied on a decision of the apex court in Associated Cement Company (supra) case where the like question had arisen in the context of provisions of the Rajasthan Sales Tax Act. Under the Rajasthan Sales Tax Act, as was being considered by the apex court Section 7 enjoined a duty on every registered dealer to furnish prescribed return for the prescribe periods in the prescribed forms in the prescribed manner and within the prescribed time with the assessing authority. Subsection (2) of Section 7 required that return shall be accompanied by a treasury receipt or receipt of any bank evidencing deposit of full amount of tax on the basis of return. Subsection (2A) of Section 7 empowered the State Government to notify requiring any dealer or class of dealers specified in such notification to pay tax at intervals shorter than those prescribed under subsection (1) and in such cases, the proportionate tax on the basis of last return was

required to be deposited at the intervals specified in the said notification in advance of the return. Subsection (3) of Section 7 envisaged that if any dealer discovers any omission, error or wrong statement in any return furnished by him he may furnish revised return in the prescribed form and in the prescribed manner before the time comes for submission of the next return but not later. Section 11B(a) provided if the amount of any tax payable under subsection (2) of Section 7, that is to say, as per return which is to be accompanied by payment of tax, and subsection (2A) of Section 7, that is to say, as per the intervals prescribed by the State Government by issuing a notification, is not paid within the time so allowed, assessee is liable to pay interest on such unpaid tax. As per clause (b) of Section 11B, if the amount specified in notice of demand whether for tax, fee or penalty is not paid within the period specified in such notice or in the absence of such specification within 30 days from the date of service of such notice, the dealer shall be liable to pay simple interest on such amount at rates which varied from time to time.

11. Pausing here, if we compare the scheme of two enactments viz. Rajasthan Sales Tax Act and Gujarat Sales Tax Act similarity in the scheme about the payment of tax at prescribed intervals before return is due, the filing of the returns along with proof of payment of tax as per return and payment of tax on assessment as per demand notice and the consequence of non payment of tax within the time allowed that exist between the two is noticeable. While under Gujarat Act one comprehensive provision of Section 47 has been enacted, the scheme has been laid bare under two separate Sections 7 and 11B in the Rajasthan statute. As noticed hereinabove, subsection (1), (2) and (3) of Section 47 of Gujarat Act envisage payment of tax at regular intervals as per the assessee's assessment or as per the rules prescribed, or as per disclosure in the statement or return which is required to be filed under Section 40, the same were provided under Section 7 of the Rajasthan Act casting a duty on the assessee to file a return within the prescribed period in the prescribed manner within prescribed time and also casting a duty on the assessee to pay tax prior to filing of return at regular intervals proportionate to tax on the basis of last return where notification under subsection (2A) of Section 7 of Rajasthan Act had been issued and return to be accompanied by proof of payment of tax in accordance with such return, coupled with a provision for filing a revised return by the assessee enabling the assessee to file a revised return on discovery of any omission,

wrong, error in the statement of return. In the context of present controversy, the difference in the two statutes about the procedural aspects in the matter of furnishing return is not relevant. Section 11B of Rajasthan Act, split in two subsections, clearly envisage liability to pay interest on default in payment of tax within time allowed under the Act. Firstly clause (a) provides liability to pay interest in the case of default in payment of tax in time at regular intervals as required under subsection (2A) of Section 7 or on failing to pay tax at the time of filing of return in accordance therewith. This provision has similarity with the provisions of subsection (4A) of Section 47 of Gujarat Act about liability of assessee to pay interest on non payment of tax by the date it is required to be paid under subsection (1), (2) and (3) of Section 47. Clause (b) of Section 11B deals with requirement of assessee to pay tax on assessment by serving a notice of demand specifying a date by which such demand is to be paid and non payment of such demand by such specified date follows with the liability to pay interest on expiry of such date. This provision corresponds to subsection (4) read with liability to pay interest in default of payment of tax within date specified in notice of demand as per assessment or reassessment, under subsection (4A) of Section 47 of Gujarat Act.

12. We are therefore of the opinion notwithstanding that the two Legislation emanate from different sources and may not be comparable for the purpose of their substantive construction, the ratio laid down with reference to Rajasthan Act is certainly relevant to be considered, and applicable in the present case. If contention of learned counsel for revenue that decision rendered in J.K. Synthetics cannot be looked into whole interpreting provision of Gujarat Sales Tax Act is accepted, it equally applies to decision in Associated Cement Limited case on which alone the decision of Tribunal is founded and which is relied on by the revenue, as that decision too is in relation to Rajasthan Sales Tax Act.

13. In the Associated Cement Company (supra) case, the majority decision laid down that Section 11B laying down the liability to pay interest is a part of machinery section and does not lay a substantive provision of charge. It was held :

"A fair reading of Section 11B of the Act suggests that the Act expects that all assessees who are liable to pay sales tax should file a

true return within the period prescribed under Section 7(1) and should produce a treasury receipt or a receipt of any bank authorised to receive money on behalf of the State Government showing that the full amount of the tax due from them has been paid. If the words on the basis of return" occurring in subsection (2) of Section 7 of the Act are construed as "on the basis of a true and proper return which ought to have been filed under subsection (1) of Section 7" then all the three classes of persons, viz. (1) those who have not filed any return at all and who are later on found to be liable to be assessed, (2) those who have filed a true return but have not deposited the full amount of tax which they are liable to pay and (3) those who have filed a return making a wrong claim that either the whole or any part of the turnover is not taxable and who are subsequently found to have made a wrong claim, would all be liable to pay interest on the amount of tax which they are liable to pay but have not paid as required by section 7(2) of the Act. This view is in conformity with the legislative intention in enacting section 11B of the Act."

14. This construction stem from envisaging duty to file return means to file true and correct return and that true and correct return is equated with return which ought to have been filed tallying with final assessment.

15. Bhagwati, J in his dissenting judgment, opined:

"The consequence of the construction suggested on behalf of the revenue would thus be that the tax payable under subsection (2) of Section 7 would be the full amount of the tax as assessed, because that would represent the tax due on the basis of a correct and proper return and the assessee would have to deposit at the time of filing the return an amount equivalent to the amount of the tax as assessed. If the assessee fails to do so, then apart from the liability to pay interest under section 11B, clause (a), the assessee would expose himself to penalty under Section 16, subsection (1), clause (in), which provides inter alia that any person, who fails to comply with any requirement of the provisions of the State Act, the requirement under subsection

(2) of Section 7 being to deposit the full amount of tax due on the basis of return, shall be liable to penalty in "a sum not exceeding Rs.50 for every day of such continuance." This is a consequence which it is difficult to believe could ever have been contemplated by the legislature. The legislature could never have intended that the assessee should be liable, on pain of imposition of penalty, to deposit an amount which is yet to be ascertained through assessment. How would the assessee know in advance what view the assessing authority would take in regard to the taxability of any particular category of sales or the rate of tax applicable to them and deposit the amount of tax on that basis?".....Moreover, on the construction of the revenue, if the assessee has not deposited at the time of filing the return an amount equivalent to the full amount of the tax assessed, the assessee would be liable to pay interest on the amount remaining unpaid from the date of filing of the return until payment. But, as I have already pointed out above, when the assessment is made and the tax payable by the assessee is determined, the assessee is given time for payment of the amount of the tax assessed up to the period specified in the notice of demand and, in the absence of such specification, within thirty days from the date of service of such notice and it is only if the assessee fails to make payment within such period that he becomes liable to pay interest on the amount of the tax assessed to the extent to which it remains unpaid. There is no liability on the assessee to pay interest on the amount of the tax assessed until after the expiration of the period specified in the notice of demand or thirty days from the date of service of such notice, as the cease may be. There would thus be a conflict between the two provisions, if the construction contended for on behalf of the revenue were accepted. Under subsection (2) of Section 7 read with section 11B, clause (a, the assessee would be liable to pay interest on the amount of tax assessed to the extent to which it has not been deposited at the time filing the return and such interest would run continuously from the date of filing of the return until payment, while under Section 11B, clause (b), the assessee would not be liable to pay interest on the amount of the tax assessed during the period specified in the

notice of demand or in the absence of such nonspecification during the period of thirty days from the date of service of such notice. Such a conflict could never have been intended by the legislature. It is a well settled rule of interpretation that a statute must be so construed as not to create any repugnance between its different provisions, for it is a basic assumption underlying every interpretational exercise that the legislature must be supposed not to have intended to contradict itself. The court must always prefer that interpretation which avoids repugnancy between two provisions of a statute and gives full meaning and effect to both. Therefore, on this principle of interpretation also the construction canvassed on behalf of the revenue cannot be accepted, as it would create a direct conflict between the provisions of clauses (a) and (b) of section 11B. The only way in which clauses (a) and (b) of Section 11B can be read harmoniously and full meaning and effect can be given to them is by construing them as dealing with distinct matters or situations. The tax payable under subsection (2) of Section 7 dealt with in clause (a) of Section 11B cannot, therefore, be equated with the amount of the tax assessed forming the subject matter of clause (b) of Section 11B and hence it must be held to be tax due on the basis of the return actually filed by the assessee and not on the basis of a correct and proper return which ought to have been filed by him."

16. This decision came to be reconsidered by Supreme Court in J.K. Synthetics Limited (supra) case, by a Bench of five judges. It approved the dissenting opinion of Bhagwati, J and overruled the majority decision in Associated Cement Company (supra). The Court did not agree with the view that provision levying interest is merely a machinery and provision does not levy charge substantively. The court said:

"It is well known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal

with defaulters. Provision is also made for charging interest on delayed payments, etc. Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. ..... But it must also be realised that provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage interest can be levied under law and it cannot be recovered by way of damages for wrongful determination of the amount."

On issue of construction of Section 7 and 11B about interest liability as per assessed tax the court held:

"The conjoint reading of Section 7(1), (2) and (2A) and section 11B of the Act leaves no room for doubt that the expression "tax payable" in Section 11B can only mean the full amount of tax which becomes due under subsections (2) and (2A) of the Act when assessed on the basis of the information regarding turnover and taxable turnover furnished or shown in the return. Therefore, so long as the assessee pays the tax which according to him is due on the basis of information supplied in the return filed by him, there would be no default on his part to meet his statutory obligation under Section 7. It is not possible to visit the assessee who pays the tax which according to him is due on the basis of the information supplied in the return filed by him with the liability to pay interest under clause (a) of Section 11B. The law did not envisage the assessee to predict the final assessment when he filed the return and expect him to pay the tax on that basis to avoid the liability to pay interest."

The court further held:

"That the appellant was not liable to pay interest under Section 11B (as it stood prior to its substitution in 1979) on the additional sales

tax from the date on which the original returns were filed but interest had to be paid only for the period subsequent to determination of sales tax under the final assessment after the expiry of the period allowed under the notice of demand."

17. The ratio fully supports the conclusion to which we have reached under the scheme of Gujarat Sales Tax Act, independently.

18. Learned counsel for the revenue also urged that return filed by the assessee were not bonafide inasmuch as the decision of the Tribunal on which the assessee had relied on for claiming exemption, was reversed on 3.11.81 before making of the assessment on 17.3.83. The liability to pay tax as per returns under subsection (4) of Section 47 cannot be equated with liability to pay tax as assessed along with return. Obligation to file true and correct return cannot be equated with return in accordance with assessed tax, so long as return is bonafide. Raising of claims to deduction or exemption which is not ultimately sustained by itself does not make the return invalid or suffering from lack of bonafide. Suffice it to state that return has been filed firstly prior to Tribunal's second decision pronouncing upon the claim of exemption on the purchases of chicory roots made by the assessee. Secondly, claim was founded and emanated from the provisions of the Act and not from the decision of the Tribunal. The decision of the Tribunal was only a supportive material for the assessee's claim. The fact that the Tribunal has reversed its earlier decision about the taxability which is not a final authority on the pronouncement of law neither made the assessee's return as such wrong or incorrect nor enjoined an obligation on the assessee to withdraw its claim for exemption which emanated from the provisions of the Act and file a revised return by surrendering his claim to exemption on the basis of Tribunal's decision. In this connection it is further to be noticed as has been noticed by the Asst. Sales Tax Commissioner himself that the Tribunal's decision holding the purchases of such chicory roots to be taxable was pending consideration before the High Court at the time when he has taken decision in revision to levy interest. We are further informed by both the learned counsel that though High Court had affirmed the order of Tribunal, decision of the High Court has since been reversed by the Supreme Court upholding the claim of the assessee as to exemption. In this state of affairs there is no room for the argument that return filed by the assessee was not bonafide or

that he was under any obligation in the absence of any declaration of law by the final authority to surrender his claim to exemption without examination, merely because in a pending matter Tribunal has taken a different view of the claim made by the assessee.

19. As a result of aforesaid discussion, we answer the question referred to us in affirmative by holding that the Tribunal did erred in confirming the order of levy of interest under the provisions of Section 47(4A) of the Gujarat Sales Tax Act, inasmuch as there is no dispute that tax payable as per the return filed by the assessee has been paid in accordance with the provisions of subsection (1) or subsection (2) of Section 47, within the time allowed and the tax has also been paid on assessment by the date specified in the notice of demand by the assessee. The assessee being not liable to pay interest on the basis of assessed tax by treating it to be the tax payable on return, the liability to pay interest in this case cannot arise under subsection (4A) of Section 47 as it stood at the relevant time.

The reference accordingly stands disposed of. There shall be no orders as to costs.

(Rajesh Balia, J)

(A.R. Dave, J)